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SIPDIS

STATE FOR WHA/AND - DHENIFIN, SBELL
STATE FOR L/LEI - HCOLLUMS AND GHARRIS
JUSTICE FOR DAAG MARY LEE WARREN
JUSTICE FOR CRM/OIA - MDRODRIGUEZ, TBLACK, AND PJOSEPH
JUSTICE FOR OPDAT

E.O. 12958: N/A

TAGS: [KJUS](#) [KCRM](#) [PGOV](#) [CO](#)

SUBJECT: INITIAL IMPLEMENTATION OF THE NEW ACCUSATORY
JUSTICE SYSTEM

SUMMARY

1. ON JANUARY 1, COLOMBIA INTRODUCED ITS NEW CRIMINAL PROCEDURE CODE IN THE JUDICIAL DISTRICTS OF BOGOTA, ARMENIA, MANIZALES, AND PEREIRA. OTHER JUDICIAL DISTRICTS WILL MAKE THE TRANSITION TO THE NEW SYSTEM OVER THE NEXT THREE YEARS. THE NEW CODE IMPLEMENTS AN ACCUSATORIAL JUSTICE SYSTEM SIMILAR TO THAT IN THE U.S. THE INITIAL RESULTS OF THE NEW SYSTEM HAVE BEEN POSITIVE, WITH GREAT IMPROVEMENTS IN RESOLVING CASES. HOWEVER, MAKING THE SHIFT FROM THE FORMER INQUISITORIAL JUSTICE SYSTEM REQUIRES A SIGNIFICANT "PARADIGM" SHIFT IN COLOMBIA REGARDING THE ROLES OF INVESTIGATORS, PROSECUTORS, DEFENSE ATTORNEYS, AND JUDGES. THE USG HAS PROVIDED AND CONTINUES TO PROVIDE SIGNIFICANT ASSISTANCE IN THIS TRANSITION, INCLUDING EXTENSIVE TRAINING OF INVESTIGATORS, PROSECUTORS, PUBLIC DEFENDERS, AND JUDGES. THERE ARE STILL CHALLENGES TO THE EFFECTIVE IMPLEMENTATION OF THE NEW SYSTEM, INCLUDING FINANCIAL PROBLEMS AND RESIDUAL ELEMENTS OF THE FORMER SYSTEM, SUCH AS THE ROLE OF THE INSPECTOR GENERAL'S OFFICE. THE DEPARTURE OF CURRENT PROSECUTOR GENERAL OSORIO, ONE OF THE NEW SYSTEM'S GREATEST CHAMPIONS, MAY ALSO COMPLICATE MATTERS. THE NEXT FOUR YEARS WILL BE CRITICAL TO THE SYSTEM'S EFFECTIVE ADOPTION.

EARLY RESULTS

2. The initial results of the Government's implementation of a new criminal procedure code in four judicial districts -- Armenia, Bogota, Manizales, and Pereira -- have been overwhelmingly positive, as has press coverage and the overall reaction of the general public. Most of the initial cases dealt with the type of street crimes that have traditionally clogged Colombia's court dockets. Cases that took months -- if not years -- to resolve under the old system are being dispatched in days or even hours. Of 3,154 persons arrested between January 1 and February 18, 1,834 had already been arraigned -- presented before a judge -- and 1,469 had been charged. Nearly 950 of these individuals had accepted pleas, and 307 had already been sentenced. (Comment: The new system has exceeded our expectations in the transition. Trials have worked well, with well-trained lawyers and judges generally implementing the new rules effectively. End comment.)

BACKGROUND

3. Colombia's 1991 Constitution precipitated significant changes to the country's criminal justice system, including the creation of the Prosecutor General's Office ("Fiscalia"), responsible for investigating and prosecuting crimes, and the Supreme Council of the Judiciary ("Consejo Superior de la Judicatura" or CSJ), which administers the entire justice system. A new criminal procedure code introduced in 1991 created a justice system that, in theory, included elements from the traditional inquisitorial system, based on Continental European procedural law, and an accusatory system, based on the Anglo-Saxon oral procedural tradition. In practice, however, the Colombian system remained almost entirely inquisitorial. Debate over whether to transition to an authentically accusatory system continued for the next 12 years.

4. In December 2002, the Colombian Congress amended the Constitution to introduce a more fully accusatory system. The Prosecutor General ("Fiscal General") was named as the head of a drafting commission charged with changing relevant law, including the criminal procedure code. The USG provided technical assistance during the drafting phase. The original draft of the new Code was broadly based on the Puerto Rican procedural code and the U.S. model. This was a Colombian initiative, not one promoted by the USG. The commission, which included representatives of the Prosecutor

General's Office, the Human Rights Ombudsman's Office ("Defensoria del Pueblo"), the Inspector General's Office ("Procuraduria"), the Supreme Court, the CSJ, the National Police, Congress, and academia, presented its draft criminal procedural code in July 2003. Congress made numerous changes to the proposed code and approved it in July 2004. The President signed it into law the following month. Although the Colombian code is more strongly accusatorial than many comparable Latin American equivalents, it continues to include complicating vestiges of the former inquisitorial system and other problematic language sprinkled throughout the code's more than 500 articles. Even so, the code is a marked improvement over the former version and represents a dramatic change in the Colombian criminal justice system.

15. The code will be implemented gradually in judicial districts throughout the country according to the following schedule:

January 1, 2005: Armenia, Bogota, Manizales, and Pereira;

January 1, 2006: Bucaramanga, Buga, Cali, Medellin, San Gil, Santa Rosa de Viterbo, Tunja, and Yopal;

January 1, 2007: Antioquia, Cundinamarca, Florencia, Ibague, Neiva, Pasto, Popayan, and Villavicencio;

January 1, 2008: Barranquilla, Cartagena, Cucuta, Monteria, Quibdo, Pamplona, Riohacha, Santa Marta, Sincelejo, and Valledupar.

----- BASIC ELEMENTS OF THE NEW CRIMINAL PROCEDURE CODE -----

16. Under the new code, prosecutors, working with police investigators, initiate the criminal process with formal accusations based on evidence developed during confidential investigations. Judges approve arrest and search warrants, interception of telephone communications, detentions, the taking of corporal evidence, etc. Prosecutors present evidence in open, oral proceedings. Defense attorneys, representing the accused, confront the evidence and present their own, if desired. The accused have the presumption of innocence and the right to remain silent. A judge rules on the admissibility and weight of evidence and makes a determination of guilt or innocence. Trials are similar to the U.S. model, with opening and closing statements and direct and cross-examination. For security reasons, there are no juries. Under the old system, prosecutors themselves acted as investigating magistrates, with the power to issue search warrants, authorize prolonged periods of detention, and weigh and give probative value to evidence at the time of its collection. Consequently, and unlike in the new system, suspects were officially notified of ongoing investigations against them in order to have access to evidence at the time it was made part of the case record. "Trials" were essentially paper exercises governed by the written record.

----- USG SUPPORT FOR THE NEW SYSTEM -----

17. The Embassy has a multi-faceted program to help the GOC implement the new code. Department of Justice (DOJ) representatives provide training and technical assistance to Colombian prosecutors and police investigators, focusing on two-week training programs that develop practical understanding of the code and their unique roles in the new system through hypothetical cases and simulated trials and crime scenes. USAID provides similar training and technical assistance to Colombian public defenders. Both DOJ and USAID provide training and technical assistance to Colombian judges. The USG has already trained over 10,000 officials. Through the U.S. Marshals Service (USMS), DOJ provides technical assistance and training on security for courthouses and courtrooms and protection for justice sector officials. The USMS will also provide training and technical assistance on witness protection. In addition, DOJ has enhanced Colombia's forensic laboratories' capacity in the areas of fingerprints, DNA, ballistic, and documentary evidence, which are key to prosecuting cases in an adversarial system. USAID has constructed and furnished 35 oral trial courtrooms.

----- ISSUES OF CONCERN -----

18. The transition to the new accusatorial justice system will require patience and persistence. The GOC's political will is critical, particularly in providing the additional financial resources necessary to ensure proper

implementation of the system. Some of these resources can come from adjusting or refocusing existing budgets. In addition, the Government could designate assets forfeited by narcotics traffickers and other criminals to subsidize the transition to the accusatory system. There continue to be numerous areas of need in this transition, including additional courtroom space and security, enhanced case management systems, improved evidence room facilities and security, and adequate office space and office equipment for the various officers of the court. Prosecutors, police, judges, and public defenders must continue to receive training and technical assistance through at least 2008, when the system will be fully implemented throughout the country. Training on subjects such as witness protection and security for courtrooms and judicial personnel must also be enhanced.

9. A serious concern at this time deals with the training of judges. The CSJ's judicial training school has contracted the National University and consultants from the private "Universidad Externado" to develop a judge's manual and provide training for judges. However, both these universities' law school faculties generally opposed the adoption of an accusatory system and the new criminal procedure code. Their preference is to maintain a more Continental European model, rather than the American model introduced by the new Code. As a result, the manual and training programs they have developed emphasize the role of the judge as an active participant in decisions on charges, the presentation of evidence, and the questioning of witnesses. This is in direct contradiction to the new Code under which judges are impartial fact finders, not parties, whose legal rulings depend on evidence provided by prosecutors and defense attorneys, not on their intimate involvement in developing the case. The CSJ's training program therefore has the potential to undermine the new accusatory system and the effective implementation of the new criminal procedure code. Paradoxically, the CSJ continues to encourage technical training provided by the Embassy. We are working to overcome these contradictions.

10. The continuing role of the Inspector General's Office in the new justice system will complicate its implementation. The Inspector General (IG), or "Procurador," is a powerful political figure with a prominent "watchdog" role over the entire Colombian State, including the justice system. Moreover, the IG has traditionally played an active role in all stages of a criminal investigation. The version of the new code originally presented to Congress significantly limited the IG's role, but intense lobbying by the Office increased its prominence in the final version. Although the code does not characterize the IG as a formal "party" to criminal proceedings, the IG is authorized to participate in all hearings and stages of a trial. All indications are that it intends to do so. Such participation could include presenting or objecting to evidence, interjecting on decisions to detain individuals, objecting to questions posed to witnesses, or making separate opening or closing statements at trial. Such active IG participation would essentially introduce a third party to any proceeding, affecting the balance of the adversarial nature of an accusatory trial and frustrating the efficient development of the system.

11. Some articles of the code are still not entirely consistent with an accusatory system. For example, the code places too many limits on prosecutorial discretion, complicating plea-bargaining and witness cooperation, which are key elements of the efficiency of an accusatory system, particularly in complex crimes. In addition, the current rules of evidence are not adequately developed. Consequently, some articles of the code should be revised. Actual implementation of the code will reveal other deficiencies, many of which will be the result of having drafted provisions based on theory rather than practice.

12. Prosecutor General Luis Camilo Osorio will finish his term in July 2005. He has been a critical figure in developing and championing the new system, but his tenure will end well before the system is fully in place. If the new accusatory system is to be effective, Osorio's successor will have to understand it, support it, and actively lead its full implementation. The President's selection of three candidates to succeed Osorio, one of whom will be selected by the Supreme Court, will have a tremendous impact on the future of the Colombian criminal justice system.

COMMENT

13. The criminal justice system is burdened by inefficiency and corruption, which adversely affects Colombia's law enforcement capabilities, public confidence in its justice system, human rights environment, and international reputation. The new criminal procedure code is an important

step toward a more efficient system that will dispense justice with speed and transparency. The success of this new system will depend to a great extent on continued USG assistance and support over the next four critical years.

WOOD